

Supplement to
AOR 2002-07
Memorandum

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2002 JUL 11 P 4:47

To: Michael Marinelli
From: Richard F. Currott
Re: Question of "Contract" Raised

cc: Theodore G. Johnsen
Date: 07/11/2002

Mr. Marinelli –

As I understand our phone conversation this morning, "one of the Commissioners" has raised a question regarding our reference to "contract" in the following quote from Careau's May 20th Memo:

The Companies will be contracting with the political committees for the committees to spend their funds and resources on the marketing effort to their own political supporters ("Supporters").

This Memo was actually the shorter of two memos on that date; the second being a longer version that included footnotes to prior Opinion guidelines we have followed. Both memos were intended to respond to point 4.b. of your May 10 memo. [See excerpts quoted below.] Our response was based upon the fact that a typical vendor relationship relies on some form of agreement between the parties. However, as I stated in our conversation, no attempt has been made to draft such an agreement to date because we are still seeking Commission guidelines.

I will add that, while I am not an attorney, I do not see that such agreement needs to be much more than a statement that if the committees choose to direct their supporters to the registration Web site, the supporters will be given the opportunity to join (subject, of course, to Commission guidelines). The next step in our proposed process does not really involve the committees; it involves the individual supporter's choice to join, which, in turn, involves a decision (by the supporter) as to whether to contribute to one or more committees or to a not-for-profit organization. As compensation and in consideration for a committee's efforts, should the subscriber/supporter decide to make federal campaign contributions under the program, the contributions would be made directly to the committees by way of monthly charges to the individual's credit card.

In other words, the probable agreement will be that if a committee directs a supporter to the registration Web sight and the supporter decides to both join and contribute to the committee, the supporter will be allowed to direct monthly contributions to the committee. I suspect that the simplicity of this would allow committees to document an agreement in a variety of acceptable forms.

NOTES

May 20, 2002 Memo References to "Contract"

From May 10, 2002, FEC Staff E-Mail

4. You state on page 4 in the first paragraph that "the political committee will receive the full amount of the credit card contribution minus the usual and normal service charge of the credit card issuers." Presumably, these service charges will be paid to the vendors you will contract with to perform various aspects of the program you have identified (merchant account services, credit card authorization and processing, etc.)

Correct: the contributor and the committees will be accessed the full amount contributed by the individual, but the cash amount deposited to the campaign [or charitable] account will be the charged amount less the third party processing and handling charges. We have structured the direct payment of contributions along the lines of prior Commission opinions, where the amount actually contributed to the political committee is reduced by the clearing processing, and service charges (which charges are considered expenditures by the political committees), but where the entire amount is treated as a contribution to the political committee. See, for example, Advisory Opinions 1995-34. The main difference being that under our program the Supporter makes each contribution (political or non-political) directly; the funds are not being handled by a corporation that is attempting to segregate those contributions from corporate treasury funds or expenses.

- a. Will Careau & Co. or Mohr Co. Mohre Communications receive any portion of these fees as compensation for the services they themselves have provided to the political committees (by establishing the donation/contribution program you describe)

No.

- b. Identify what consideration or compensation Careau & Co. or Mohr Co. Mohre Communications, will otherwise receive for providing their services to the political committees who participate in your program.

Please refer to the accompanying memos - a summary version and a more detail version. These memos were written after you clarified your underlying concern about "adequate compensation" during our much appreciated (by me) phone conversation.

From May 20, 2002, Memo #1

The Companies will be contracting with the political committees for the committees to spend their funds and resources on the marketing effort to their own political supporters ("Supporters").

Under agreement with the Companies, the contracting committees themselves are responsible for actually marketing the program to their unique list of Supporters. As

such, the committees retain their Supporter list but bear the costs and risks associated with the marketing efforts.

From May 20, 2002, Memo #2

In brief, the Companies will be contracting with the political committees to provide for payment under the Program and for the committees to spend their funds and resources on the marketing effort to their political supporters ("Supporters"). Obviously, this will result not only in direct payment to the Companies by the Supporters, as compensation under the Companies' contracts with the committees, but also in a cost-avoidance benefit (i.e., compensation) to the Companies. Additionally, it means that the committees will bear real risks under the Program, both in terms of marketing and in terms of return on investment.

[T]he Commission has been concerned that, regardless of the degree of success in the effort to raise funds, the committee would retain contribution proceeds while foregoing little, or the committee would assume little or no risk with the vendor bearing all, or nearly all, the risks related to raising the contributed funds.⁸ This appears to be the basis of the Commission's position that the committees provide adequate compensation to contracting service providers. An example of Commission response to these concerns has been to require an adequate deposit by the committees to the vendor where the vendor is advancing costs of marketing the proposed program.⁹

[Referencing Committee-Contracted Vendor Service Programs¹³] A vendor contracts with a committee (or committees) to provide a service/product that allows a purchaser of the service/product to make a contribution

[Referring to 900-Line Programs¹²] Generally, the Commission allows these programs when there is a contract relationship that ensures the vendor will not be left financially at risk (e.g., the vendor holds back funds as a reserve; is paid a fee by the contracting committee to cover marketing expenses; or, the committee deposits funds to cover the vendors marketing exposure - in other words, the Commission's Two Concerns are satisfied) and when the funds paid to the committees are not commingled with corporate treasury funds

[Under Prospect Piece type programs] Committees typically contract[] for unique lists to send out mailers, etc., in an attempt to identify and harvest new supporters/donors

Under agreement with the Companies, the various committees themselves contact their unique list of Supporters to market the Program (much like a Prospect Piece Program, but involving known contributors). The committees retain their lists and undertake real costs and real risks associated with the marketing effort. As such;

⁸ See, for example, Advisory Opinions 1992-24, 1991-20, and 1990-14.

⁹ See Advisory Opinion 1990-14.

¹³ See, for example, Advisory Opinions 1999-22, 1995-34, and 1994-33.

¹² See, for example, Advisory Opinions 1991-26, 1991-20, 1991-2, 1990-14, and 1990-9.

there is a cost-avoidance benefit to the Companies paid as consideration by the committees under contract, as well as direct compensation paid by the Supporter.

In other words, by agreement, the Companies are providing a service, which is purchased with a monthly service fee by a Supporter who chooses to join the Program. This per-subscriber monthly fee is within the industries' usual and normal charges for the access and service provided to a non-political client, paid to the Companies as compensation under the terms of the contract with the committees, and ensures a reasonable profit to the Companies. Additionally, the committees assume the expense and the risks of marketing the Program in the hope that their efforts will result in direct monthly contributions from the Supporter. And, finally, the Supporter is paying both separate amounts (the monthly service fees and the monthly contributions) directly through a merchant account, ensuring that no prohibited corporate contributions are made.

As expressed above, our FOR presents a variation on the general vendor-assisted fundraising themes, in a manner that we believe satisfies the Commission's two underlying concerns regarding adequate compensation by committees. This is supported by the fact that the contracting committees market the Program to their unique list of Supporters means that they not only retain their lists, but also assume genuine costs and risks associated with marketing the program.